

FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF MISSOURI

LEE T. LAWLESS
FEDERAL PUBLIC DEFENDER

1010 Market St.
Suite 200
St. Louis, MO 63101

Diane L. Dragan
ASSISTANT FEDERAL PUBLIC DEFENDER

(314) 241-1255
FAX: (314)-421-3177

Michael Gans, Clerk of Court
United States Court of Appeals
111 South 10th Street, 24th Floor
St. Louis, MO 63102

November 12, 2014

Re: *United States v. Fred Robinson*, No. 13-3253, Fed. R. App. P. 28(j)
Appellant's response re divided *en banc* ruling in *U.S. v. Katzin*

Dear Clerk Gans:

This letter addresses *United States v. Katzin*, 2014 WL 4851779 (3rd Cir., October 1, 2014). The majority found a basis for the good faith exception in *Katzin*'s brief GPS-tracking prior to *United States v. Jones*, 132 S.Ct. 945 (2012). *Katzin* addressed the materially different facts that agents GPS-tracked *Katzin* for only two days – so brief that it manifested “nearly identical conduct to that authorized in” *United States v. Knotts*, 460 U.S. 276 (1983) (beeper in chloroform container used to obtain search warrant three days later). *Katzin* at *8.

Katzin distinguished the one Circuit Court of Appeals case rejecting warrantless GPS-tracking before *Jones* on grounds that it “involved surveillance of far greater duration,” for four weeks. *Katzin* at *12, citing *US v. Maynard*, 615 F.3d 544 (D.C.Cir.2010). *Katzin* would distinguish the nearly *two-month* tracking of *Robinson* and affirm the District Court's rejection of good faith here. *Katzin* conflicts with this Court's rule that the good faith exception requires “controlling circuit precedent.” *United States v. Barraza-Maldonado*, 732 F.3d 865 (8th Cir. 2013).

Katzin's alternative position that out-of-circuit rulings upheld GPS tracking is also distinguishable. The single Eighth Circuit case post-dated Robinson's tracking and found a lack of standing, *United States v. Marquez*, 605 F.3d 604 (8th Cir. 2010). *Marquez* cautioned that randomly generating voluminous GPS-data to ferret "suspicious patterns of activity" raises different concerns absent in tracking a vehicle reasonably suspected to contain drugs for "reasonable period[s]." *Id.*, at 610. The other GPS cases involved suspects against whom authorities already had abundant proof and questioned using prolonged GPS-tracking to find "patterns of suspicious behavior" from which to launch investigations. *United States v. Garcia*, 474 F.3d 994, 998 (7th Cir. 2007); *United States v. McIver*, 186 F.3d 1119, 1126-27 (9th Cir. 1999). Extensive investigation and a previous arrest preceeded the use of GPS to track *Katzin* to another burglary. *Katzin* at *2, *8, *16. Robinson alleges the danger of "deliberate" evasion of warrants by law enforcement through warrantless GPS-tracking based on uncorroborated and self-interested complaints.

Katzin dissenters warned that the majority articulated no cognizable neutral limit on warrantless and novel technological surveillance.

Respectfully submitted,

/s/Diane L. Dragan

Diane L. Dragan

Assistant Federal Public Defender

and

/s/Felicia Jones

Felicia Jones

Assistant Federal Public Defender

1010 Market, Suite 200

Saint Louis, MO 63101

The body of this letter does not exceed 350 words and a copy has been served on all counsel for respondent by filing through this Court's CEJ filing system.